

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ANTHONY THOMAS,

Plaintiff,

v.

PERSON UNKNOWN IN SOCIETY,

Defendant.

3:19-cv-00691-RCJ-CLB

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE<sup>1</sup>**

Before the court is Plaintiff Anthony Thomas's ("Thomas"), application to proceed *in forma pauperis* (ECF No. 1), and *pro se* civil rights complaint (ECF No. 1-1). For the reasons stated below, the court recommends that Thomas's *in forma pauperis* application (ECF No. 1) be granted, and his complaint (ECF No. 1-1) be dismissed with prejudice.

**I. IN FORMA PAUPERIS APPLICATION**

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1. "[T]he

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<sup>1</sup> This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 supporting affidavit [must] state the facts as to [the] affiant's poverty with some particularity,  
 2 definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quotation  
 3 marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the benefits  
 4 of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

5 A review of the application to proceed IFP reveals Thomas cannot pay the filing fee;  
 6 therefore, the court recommends that the application (ECF No. 1) be granted.

## 7 **II. SCREENING STANDARD**

8 Prior to ordering service on any defendant, the Court is required to screen an *in forma*  
 9 *pauperis* complaint to determine whether dismissal is appropriate under certain  
 10 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28  
 11 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for  
 12 the enumerated reasons). Such screening is required before a litigation proceeding *in forma*  
 13 *pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir.  
 14 2015).

15 "[T]he court shall dismiss the case at any time if the court determines that – (A) the  
 16 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; (ii)  
 17 fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against  
 18 a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

19 Dismissal of a complaint for failure to state a claim upon which relief may be granted  
 20 is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)  
 21 tracks that language. When reviewing the adequacy of a complaint under this statute, the  
 22 court applies the same standard as is applied under Rule 12(b)(6). See, e.g., *Watison v.*  
 23 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a  
 24 plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii)  
 25 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a  
 26 claim."). Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
 27 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

1 The Court must accept as true the allegations, construe the pleadings in the light  
 2 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v.*  
 3 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints  
 4 are "held to less stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v.*  
 5 *Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause  
 7 of actions," it must contain factual allegations sufficient to "raise a right to relief above the  
 8 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading  
 9 must contain something more. . . than. . . a statement of facts that merely creates a suspicion  
 10 [of] a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a  
 11 minimum, a plaintiff should include "enough facts to state a claim to relief that is plausible  
 12 on its face." *Id.* at 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of  
 14 the complaint the action is frivolous and could not be amended to state a federal claim, or  
 15 the district court lacks subject matter jurisdiction over the action. *See Cato v. United States*,  
 16 70 F.3d 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

### 17 **III. SCREENING OF COMPLAINT**

18 Thomas brings this action pursuant to 42 U.S.C. § 1983, against Person Unknown in  
 19 Society. (ECF No. 1-1.) Thomas's complaint is rambling, nonsensical, and filled with  
 20 incomplete sentences. Dismissal on those grounds alone is appropriate. Federal Rule of  
 21 Civil Procedure 8(a)(2) requires that a complaint contain "a short and plain statement of the  
 22 claim showing that the pleader is entitled to relief, in order to give the defendant fair notice  
 23 of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555  
 24 (quotation and alteration omitted). It must also include "a demand for the relief sought. . . ."  
 25 Fed. R. Civ. P. 8(a)(3). Here, Thomas's largely incomprehensible narrative makes it nearly  
 26 impossible for the court to identify the factual or legal basis for his claims or the nature of  
 27 his requested relief.

1 Thomas states no claim upon which relief may be granted, and given the vague  
2 nature of the allegations, amendment would be futile. See *Cato*, 70 F.3d at 1106. Therefore,  
3 it is recommended that the action be dismissed with prejudice.

4 **IV. CONCLUSION**

5 Consistent with the above, the court finds that dismissal is warranted under 28 U.S.C.  
6 § 1915(e)(2)(B)(ii). Because amendment would be futile, the dismissal should be with  
7 prejudice. See *Cato*, 70 F.3d at 1106.

8 The parties are advised:

9 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
10 Practice, the parties may file specific written objections to this Report and Recommendation  
11 within fourteen days of receipt. These objections should be entitled "Objections to  
12 Magistrate Judge's Report and Recommendation" and should be accompanied by points  
13 and authorities for consideration by the District Court.

14 2. This Report and Recommendation is not an appealable order and any notice  
15 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District  
16 Court's judgment.

17 **V. RECOMMENDATION**

18 **IT IS THEREFORE RECOMMENDED** that Thomas's application to proceed *in forma*  
19 *pauperis* (ECF No. 1) be **GRANTED**;

20 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** Thomas's complaint (ECF No.  
21 1-1); and

22 **IT IS FURTHER RECOMMENDED** that the complaint (ECF No. 1-1) be **DISMISSED**  
23 **WITH PREJUDICE**.

24 **DATED:** February 4, 2020.

25   
26 **UNITED STATES MAGISTRATE JUDGE**  
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